

Local 137, Sheet Metal Workers International Association, AFL-CIO and Walter Sign Corporation

Local 3, International Brotherhood of Electrical Workers, AFL-CIO and Walter Sign Corporation. Cases 29-CP-444 and 29-CP-445

March 30, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On December 11, 1981, Administrative Law Judge Robert M. Schwarzbart issued the attached Decision in this proceeding. Thereafter, both Respondents filed exceptions and supporting briefs, and the Charging Party filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent Local 137, Sheet Metal Workers International Association, AFL-CIO, and Respondent Local 3, International Brotherhood of Electrical Workers, AFL-CIO, their officers, agents, and representatives, shall take the action set forth in the said recommended Order.

¹ Respondent Local 137 has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² In adopting the Administrative Law Judge's conclusion that both Respondents violated Sec. 8(b)(7)(C) of the Act by picketing for over 30 days without filing a representation election petition, we place no reliance on events occurring after June 1, 1981, by which time both Respondents had filed representation petitions. We further find it unnecessary to determine whether the coordination underlying Respondents' activities made each Respondent the agent of the other, as found by the Administrative Law Judge. The facts here show that each Respondent directly engaged in picketing in circumstances prohibited by Sec. 8(b)(7)(C).

DECISION

STATEMENT OF THE CASE

ROBERT M. SCHWARZBART, Administrative Law Judge: These consolidated cases were heard on June 22, 23, and 24, 1981,¹ in Brooklyn, New York, pursuant to charges filed on May 13 by Walter Sign Corporation, herein Walter Sign, and a consolidated complaint issued May 28.

The complaint alleges that Local 137, Sheet Metal Workers International Association, AFL-CIO, herein called Respondent Local 137, and Local 3, International Brotherhood of Electrical Workers, herein called Respondent IBEW, herein collectively called the Respondents, violated Section 8(b)(7)(C) of the National Labor Relations Act, as amended, by picketing Walter Sign at its Elmhurst, Queens, New York, facility for more than 30 days without filing petitions for elections under Section 9(c) of the Act. The complaint also alleges that the Respondents are not currently certified by the Board as collective-bargaining agents of Walter Sign's employees. The Respondents, in their answers, deny the commission of any material unfair labor practices. A principal question presented is whether or not the picketing in this case had an unlawful object.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The Charging Party and Respondent IBEW argued orally and the brief filed by the Charging Party has been carefully considered.

Upon the entire record of the case and my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material, Walter Sign, a New York corporation, has been engaged at its Elmhurst, Queens, New York, plant in the manufacture, sale, and distribution of signs and related products.

Contrary to the Respondents, the record shows that during the 12 months preceding the filing of the charges herein, a representative period, Walter Sign, in the course and conduct of its operations, purchased and caused to be delivered to its New York location, porcelain signs and other related products valued in excess of \$50,000, of which signs and related products valued in excess of \$50,000, were shipped directly to its New York plant in interstate commerce directly from States other than New York, where Walter Sign is located.² There-

¹ All dates hereinafter are within 1981, unless otherwise specified.

² The Respondents have placed in issue whether Walter Sign meets the Board's interstate commerce jurisdictional standards for nonretail enterprises. Noel Walter, president of Walter Sign, testified that pursuant to a contract with the New York City Transit Authority under which Walter Sign was to furnish porcelain signs for use in 27 subway stations, at a total cost to the city of around \$200,000, his Company purchased several shipments of signs from a supplier in Houston, Texas. Four invoices from this Texas supplier to Walter Sign, representing signs to be used in four

Continued

fore, I find that at all times material, Walter Sign has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Respondent Local 137 and Respondent IBEW are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

Walter Sign, in the business of manufacturing, distributing, and installing signs, employed approximately 15 employees at its Elmhurst, Queens, New York, plant as of April 13. The president of Walter Sign is Noel Walter,³ and Leonard LaRosa is general manager.

From mid-March until mid-April, representatives of Respondent IBEW distributed literature in front of Walter Sign's premises. These leaflets read as follows:

JOIN TODAY
JOIN THE LEADER
JOIN BROTHERHOOD/ON THE MARCH
THE STEP YOU MAKE MAY
BE THE MOST IMPORTANT
YOU'VE EVER MADE

A drawing to the right showed a drawing of a man counting what appears to be money by a cashier's cage with the caption "You owe it to yourself." In a drawn box the leaflet advised readers to:

Inquire of the nearest IBEW office or representative International Brotherhood of Electrical Workers AFL-CIO and CLC

A second leaflet with the IBEW emblem and "IBEW" in large letters across the top informed employees that:

IF YOU'RE EMPLOYED IN—

of the contracted subway stations, showed that on February 19 subway signs valued at a total of \$75,081.45 were shipped to Walter Sign's New York location. Shipping and invoice records show that additional large shipments were received by Walter Sign from this supplier in August. Contrary to unsubstantiated arguments by Respondent IBEW that, as the invoices do not detail routes of shipment, the signs may not have been moved directly from the facilities of the Texas supplier to Walter Sign's New York City plant, Walter testified without contradiction that all shipments were received directly from Texas. This testimony supported by records showing the supplier's Texas address, dates of shipment, quantities, and types of merchandise is credited. Even, *arguendo*, had the signs ordered from and originating in Texas been forwarded to Walter Sign directly from a public warehouse in New York State, this would not have been material. In *United Cigar-Whelan Stores Corporation and Whelan Drug Company, Inc.*, 114 NLRB 1219, 1221 (1955), the Board noted that the brief housing of goods purchased from an out-of-state supplier in public warehouses in the recipient's own state did not constitute a break in the practical continuity of movement of goods until they reached the purchaser, so as to preclude a finding of direct inflow under the Board's standards.

³ Walter became company president in 1977.

MANUFACTURING, INSTALLATION,
DESIGN, MAINTENANCE, REPAIR RE-
CORDING, BROADCASTING, TELEPHONE
IN THE ELECTRICAL AND ELECTRONIC
FIELD, THE IBEW IS FOR YOU
YOU OWE IT TO YOURSELF TO JOIN
I.B.E.W!

To the right of the foregoing, across the top, the following appears:

YOU PROBABLY HAVE INSURANCE, THE
FOLLOWING IS LISTED AUTOMOBILE,
FIRE, THEFT, LIFE, HOSPITALIZATION
BUT DO YOU HAVE JOB INSURANCE?
THE IBEW OFFERS INSURANCE
AGAINST—
DISCRIMINATORY DISCHARGE
DISCRIMINATORY LAY-OFF
LOW WAGES
POOR WORKING CONDITIONS.

A third leaflet with an illustrated cover sheet "Why All The Fuss About Union Cards," provided an explanation that the National Labor Relations Act requires that a majority of the employees sign cards authorizing the Union to represent them before the Union can ask for recognition from the Company and advised that the employees sign and mail attached authorization cards. It was explained there that when a majority of cards have been secured, the IBEW will ask the Company for recognition. If not granted, the Union would petition the Board for an election in which the employees would vote. When the Board certifies the Union, contract negotiations for higher wages, job security, and improved working conditions would begin. It is undisputed that much additional literature of similar nature also was concurrently distributed at Walter Sign's premises by Respondent IBEW, and also by Respondent Local 137.

Walter testified that one day in late March, he saw John D. Crowley, Respondent IBEW business agent, handing out such leaflets outside the Company's premises. When Walter asked what Crowley was doing there, Crowley replied that he was trying to organize Walter's place. Walter retorted that he was not interested in being organized. Walter related that he also noticed Camillo Bombadiere, Sheet Metal Workers Union International organizer for the eastern United States, in front of the plant while the leafleting was in progress.

2. The picketing

Walter testified that on March 31 he met with Respondent IBEW Business Representative Crowley at Crowley's office in Flushing, Queens. Also present were Sheet Metal Workers Union Representatives Bombadiere and William Fotiadis, the latter being business agent for Respondent Local 137. Crowley began the meeting by telling Walter that he would like him to sign an agreement with Respondent IBEW. Walter replied that he did not have any electrical work to speak of. Fotiadis then interjected that if Walter had a Local 137 agreement, it would be very advantageous to his firm. Walter respond-

ed that although his Company had had some difficulties with Fotiadis' union in the past, Fotiadis should drop off his agreement at Walter's office. Crowley announced that this was a new regime and that Walter should not be concerned about past difficulties. Walter, however, told Crowley that he still was not interested in signing an agreement with Respondent IBEW. Crowley told Walter to find an attorney.

According to Walter, on April 15, around 9:30 a.m., Crowley visited his office and told Walter that he represented his Company's employees. When Walter pointed out that Crowley did not represent them, Crowley left the office and moved in the direction of the plant area yelling, "Strike, strike, strike!" Thereafter, five Walter Sign employees, Thomas, Grace, Donald Trautman, Michael Martin, Skip Pinto, and Ray Vasquez, left the plant and joined the picketing that had begun immediately in front of Walter Sign's premises.

Walter related that when he looked out the window after Crowley left his office, he saw approximately 50 people in front of the plant. Some carried blue picket signs that bore the legend "Walter Sign On Strike, Local 3, International Brotherhood of Electrical Workers." Others carried red signs declaring "Walter Sign On Strike, Local 137, Sheet Metal Workers International Association."⁴

Walter averred that on May 11, while the picketing continued, he met in his office with Respondent 137 Business Representative Fotiadis. Fotiadis asked whether Walter would sign an agreement with Respondent IBEW in order to solve this problem. Walter reiterated that his Company did virtually no electrical work. Fotiadis replied that Crowley must have gotten some false information, but was not going to back down concerning the picketing. Fotiadis then asked if one of Walter's present employees would join Respondent IBEW. Walter replied that he was not interested.⁵

On June 1, the U.S. District Court issued a temporary restraining order with respect to the picketing by the Respondents, which order was served on the Unions on June 2. As the result, after June 2, use of the picket signs was discontinued by the Respondents. Since then, approximately five to eight persons have remained outside Walter Sign's premises distributing the following leaflet reproduced on the stationery of Local 3, IBEW:

**TO WHOM IT MAY CONCERN
THIS IS INFORM YOU THAT THE STRIKE
BY LOCAL UNION #3, I.B.E.W. IS CONTINU-
ING AND WILL CONTINUE FOR AS LONG
AS IS NECESSARY. OUR PICKET LINE HAS
BEEN TEMPORARILY RESTRAINED PEND-
ING THE OUT-COME OF LEGAL PROCEED-
INGS.
OUR STRIKE HAS NOT BEEN, AND CAN
NOT BE ENJOINED.**

⁴ For reasons of credibility discussed in fn. 22 below, contrary to Walter, I accept the Respondents' contention that Respondent 137 did not begin to picket at Walter Sign until about 1 week after the April 15 start of picketing by Respondent IBEW. At that time, Respondent Local 137 did use the red picket signs described by Walter.

⁵ Walter's testimony concerning the May 11 conversation with Fotiadis is uncontradicted as Fotiadis did not testify in this proceeding.

**YOUR CONTINUED UNDERSTANDING AND
SUPPORT IS APPRECIATED.**

**/s/ THE WALTER SIGN EMPLOYEES ON
STRIKE!**

Walter observed that, after removal of the picket signs, persons who had picketed continued to appear outside the Company's plant each day, handing out copies of the above-quoted letter to passers-by and to drivers for suppliers who attempted to make deliveries. When the drivers, having received this letter, persisted in pulling up to the loading dock, the pickets would encircle the cab and the drivers would leave without making deliveries.

Accordingly, Walter testified that a truck from Walter Sign's paper supplier, Viking Criterion, arrived at Walter Sign's loading dock, approximately 1 week before the hearing, to make a scheduled delivery. The truck was surrounded by pickets who gave copies of the letter to the driver. The driver then went into Walter's office and called his employer in Walter's presence. He declared that he had been threatened and was not going to make the delivery. The driver then departed.

Similarly, on Friday, June 19, at midday, a truck delivering solvents ordered from Baron Blakeslee arrived at Walter Sign's premises before midday. As the Baron Blakeslee truck arrived at the loading dock, it was surrounded by pickets who would not allow the driver to make the delivery.

A Baron Blakeslee representative, then summoned to the plant, announced that the delivery could not be made at Walter Sign's loading dock. He had the truck moved across the street from the plant where the truck was unloaded and, using a forklift, the merchandise was moved into Walter Sign's shop by several of that Company's employees. Involved in this operation were: Savas Kay, described as an assistant manager; Clyde Weeks, hired since the start of the April 15 strike; and Jaime Palacio, an employee who did not join the strike.

Walter testified that years before Walter Sign had had collective-bargaining agreements with Respondents IBEW and Local 137 and with Local 230, Sign Painters.⁶ At the time the strike began, Walter Sign had one part-time employee, Pericles Gomide, who was a member of Local 230, Sign Painters. Although Walter averred in a pretrial affidavit that he thereafter replaced Gomide, he testified at the hearing that he had continued to use Gomide after April 15 on outside installations so that he would not have to cross the picket line. After June 15, Gomide became a full-time employee of Walter Sign and thereafter did work inside the plant as well.

Walter related that because of the difficulties in receiving deliveries at his Company's loading dock created by the pickets since April 15, it has been necessary for

⁶ Crowley explained that in the sign industry, the employees of each employer are represented in separate bargaining units on a "tri-trade" basis by the Sheet Metal Workers with jurisdiction over metal fabrication and installation work, the Sign Painters and the IBEW, representing the electrical workers. In New York City, the tri-trade unions who negotiate with employers in the sign industry are Local 3, IBEW, Local 137, Sheet Metal Workers, and Local 230, Sign Painters.

Walter Sign personnel to arrange to meet suppliers' trucks at predetermined places away from the plant, unload them there, and to move the merchandise to the plant from those distant points. Of the various ordered materials delivered directly or indirectly to the plant since the start of the picketing, only about 50 percent has been received. The result has been to reduce the monthly volume of sales by at least half the prior amount.

A longstanding business relationship between Walter Sign and a sign-rigging and installation firm owned by John Montana, Service Sign Erectors, has been interrupted by the picketing since mid-April.⁷ Walter testified that during a telephone conversation with Montana after April 15, he was told that Montana could not pick up certain signs at Walter's premises because if he crossed the picket line, Local 3 would strike against him. When Walter asked why Respondent IBEW would strike, as Montana did not do any electrical work and Local 137 represented his sign installers, Montana replied that Walter did not understand; there would be a strike.

According to Walter, in early May, he encountered Montana at the Board's Regional Office. He told Montana on that occasion that he knew that Montana's Service Sign Erector Company had no agreement with Respondent 3, IBEW, that the subway signs in their joint venture were being installed by Local 137 mechanics, and asked why Local 3 would picket. Montana replied that he had another company called Montana Electric that did have an agreement with Local 3 and that he had been threatened that the men would strike if he picked up Walter's signs.⁸

Crowley, in turn, recalled that, through the years, Respondent IBEW has signed agreements with various Montana-owned companies, identifying four by name. However, although Respondent IBEW has had only one contract at any given time with Montana, as far as Crowley was concerned, Montana was the signatory and that agreement pertained to all of Montana's companies that did work in the sign industry.

Although none of the tri-trade locals in the New York City sign industry were certified as bargaining representative of Walter Sign employees, Walter conceded that he had learned from his father, Lewis Walter, who preceded him as president, that 15 years before, the Company had had collective-bargaining agreements with Respondents IBEW and Local 137, and also with Local 230, Sign Painters. Except as to Local 230, those contracts are long expired. Although in the past year, Walter Sign had executed a collective-bargaining agreement with Local 230, Sign Painters, which contract expired on March 31, 1981, and no new agreement has

been signed, Local 230 did not participate in the picketing at Walter Sign's premises.

On April 14, 1975, just 6 years before the start of the present dispute, Walter Sign and Respondent IBEW did execute a recognition agreement whereby the Company recognized that Union as bargaining representative of Walter Sign's electricians, maintenance mechanics, and helpers, excluding supervisors and all other employees employed by Walter Sign at its Elmhurst plant. However, the record shows that there was no followup of this recognition agreement by negotiation and no collective-bargaining agreement was thereafter signed. Similarly, as noted, there was no current collective-bargaining agreement between Walter and Respondent 137.

On May 22 and June 1, Respondent IBEW and Respondent 137, respectively, filed petitions for representation elections for separate units of Walter Sign employees. Pursuant to these petitions, a consolidated hearing was held but no decision has issued.

Crowley testified that in mid-March, he, Sheet Metal Workers International organizer Bombadiere, and Respondent Local 137 Business Representative Fotiadis went to Walter's office but were unsuccessful in their attempt to meet with him.

In mid-March, after the above-described leafleting began outside Walter Sign's premises by the Respondents, Walter visited Crowley in his office. Again, Bombadiere and Fotiadis were present.⁹ At that meeting, Crowley told Walter that his firm was doing work usually done by the people whom Crowley represented. Crowley requested that Walter either honor his agreement with Respondent IBEW, referring to the 6-year-old recognition agreement, or stop doing his Union's work.¹⁰ He suggested that Walter hire an attorney.¹¹

Crowley related that he next saw Walter on the morning of April 15 when he went to Walter's office and announced that Walter had had a month to decide what his position was going to be and that Walter was still doing the work of the people whom Crowley represented. He then put forward some authorization cards.¹² However, Walter put his hands in front of his eyes and repeated, "I see nothing, I see nothing." Walter then told Crowley that he should leave. He opened the door and took Crowley by the elbow. As Crowley headed for the door, he yelled back over his shoulder that he had no alternative but to strike.

⁹ Walter had come to Crowley's office at the latter's invitation when he called to discuss the leafleting with Crowley.

¹⁰ Crowley corroborated that some time in mid-March he had asked Walter to sign a collective-bargaining agreement with Respondent IBEW, but denied that he had done so during the meeting in his office, also attended by Bombadiere and Fotiadis.

¹¹ Crowley did not specifically recall how Fotiadis and Bombadiere of the Sheet Metal Workers Union happened to be at his meeting with Walter, except that the matter related to a tri-trade situation. He explained that in the sign industry other tri-trade unions were welcome at such meetings as his union had had on that occasion with Walter.

¹² Earlier, Thomas Grace, an employee of Walter Sign, had collected 12 signed authorization cards from employees which he had given to Crowley on the evening of April 14. Crowley, however, was interested in representing only five of these employees, who had signed the cards he attempted to show Walter on the morning of April 15.

⁷ Montana, who also does business through several other corporate entities, had erected larger signs for Walter Sign over a period of from 20 to 25 years in a series of about 30 transactions. Montana also is involved in a joint venture with Walter Sign in the above-referred contract with the New York City Transit authority to provide and install signs at some 27 subway stations.

⁸ Although Walter initially repeatedly insisted that he did not learn until that occasion, in early May, that Montana with whom he has had a longstanding business relationship was party to a collective-bargaining agreement with Respondent IBEW, he later contradicted this testimony by admitting that he had known since 1975 that Local 3 had had a bargaining relationship with Montana.

Outside the building, Crowley immediately set up a picket line. Within a half hour, five of Walter's employees walked out and joined the line.

That morning, after the picket line was established, Crowley asked Fotiadis if his people were going to be picketing at Walter Sign. While he does not remember Fotiadis' answer, he recalled that within a week, Respondent Local 137 did start to picket there.¹³

Crowley's denial that his union had interfered with deliveries made to Walter Sign's premises after the start of the picketing is not credited.

The Respondents' overall position and arguments will be detailed and considered below under the discussion and conclusions herein. However, one important reason given by Crowley for the continued picketing was to protest the asserted discharge of five Walter Sign employees who had left work and joined the picketing on April 15.

In this regard, synthesizing the testimony of employees Thomas Grace, Michael Martin, and Donald Trautman, on April 15, about 10 minutes before the scheduled 9:30 a.m. coffeebreak, usually taken by employees at a coffee truck parked outside the shop, Assistant Manager Savas Kay entered the shop area and walked around with a list, taking the men's coffee orders. Kay told the employees that he did not want anyone to go outside; the boss, Walter, was going to buy coffee. Soon after, General Manager Leonard LaRosa also came into the area and announced that there were going to be union problems; union goons were outside. The Company was afraid that there would be violence and that the men would be hurt if they went outside. At 9:30 a.m., Grace heard Crowley yell, "Strike," in the direction of the loading dock. Grace then moved to the service door,¹⁴ which had been locked by LaRosa.¹⁵ As Grace fumbled with the bolt lock on the door, LaRosa came up behind him and repeatedly declared that Grace should not go outside, that he should come back and not unlock the door. Grace replied that he was going through the door and that the men were going on strike. LaRosa told Grace that if he went out, he would be fired. Nonetheless, Grace succeeded in pushing the lock open and was the first of the employees to walk out.

He, thereafter, was followed by Martin who, like the others, had seen Grace leave. Martin was the second employee to walk out and join the strike. Employees Donald Trautman, Ray Vasquez, and Skip Pinto also joined the strike that morning, even after LaRosa had

told them that if they went out, they could not come back.

Upon joining the picket line, the above-named individuals carried the blue IBEW picket signs, described above, until use of these signs was discontinued on or about June 2. During that period, Grace was among the pickets who spoke to drivers arriving to make deliveries at the premises, asking if they were union or nonunion. Drivers who were union members were asked to honor the picket line; others crossed. After the signs were taken down, these men were among those who remained in front of Walter Sign's premises, passing out leaflets.¹⁶

Grace related that when on Friday, April 17, he returned to the plant to collect his paycheck, Assistant Manager Kay asked what kind of work he was going to get into now.

General Manager LaRosa testified that on April 15, at or about 9:30 a.m., as he was going into the office area from the shop, he saw Crowley and another man, whom he did not know, emerge from Walter's office, heading towards the shop. Crowley began to shout, "Strike! Strike! Come on, you are all on strike." LaRosa asked Crowley if there was a need for him to make such a disturbance and suggested that he leave. As LaRosa approached, Crowley told LaRosa not to touch him. LaRosa replied that if Crowley did not touch him, he would not touch Crowley. As Crowley left, Walter came out of his office, gave LaRosa some money, and told him to have someone bring in the coffee that day rather than have the men go out.

LaRosa then went into the plant area and told the men not to go to the coffee truck at breaktime. The Company was making a list for coffee orders as it looked as if there might be a strike and the Company did not want the men to become involved. LaRosa did not recall speaking to Grace that morning, but did see him leave, followed by Martin, Trautman, Pinto, and Vasquez. LaRosa denied having locked the doors and could not remember having said anything to the men about violence or about union goons being outside the plant. He did remember asking Martin as the latter was leaving to join the strike, whether he was going to leave his toolbox in the shop. Martin replied in the affirmative but stated that he would come back for it. The box, however, is still in the shop. LaRosa also asked Trautman where he was going when Trautman, leaving, came back for his coat. Walter, too, testified that none of the employees who had joined the strike were terminated. None had returned to work by the time of the hearing, and two new shop employees had been hired since April 15.

B. Discussion and Conclusions

As the Respondents are not certified as the bargaining representatives of any of Walter Sign's employees, as they picketed Walter Sign at its Elmhurst, Queens, premises for more than 30 days before filing petitions under Section 9(c) of the Act and as such picketing induced in-

¹³ Although denying that the picketing, when it began on April 15, had recognitional/organizational objectives, Crowley testified that even before then, when his union had been interested in representing Walter Sign employees, Respondent IBEW claimed jurisdiction over no more than five of Walter Sign's employees, who, as asserted, did electrical work. As to the remaining 10 employees, 3 were sign painters who came under the jurisdiction of Local 230, while others were metal fabricators and mechanics generally under the aegis of Respondent Local 137.

¹⁴ Grace, who on the preceding evening had turned over collected authorization cards to Crowley, had been told then that Crowley would be at Walter Sign around 9:15 the next morning to offer Walter a collective-bargaining agreement. Accordingly, Grace had been forewarned that matters might climax at that time.

¹⁵ When LaRosa entered the work area at 9:30 that morning, he locked all the doors.

¹⁶ Martin, however, testified that after being instructed to stop carrying a picket sign, he did not participate in the leafleting done by others, but merely stood alone on a far corner in the vicinity of the plant, in effect, isolating himself.

dividuals employed by other persons in the course of their employment not to deliver to or pick up goods at Walter Sign, a violation of Section 8(b)(7)(C) of the Act has occurred if an object of the picketing was to force or require Walter Sign to recognize or bargain with the Respondents as representatives of its employees.¹⁷

The Respondents contend that their concurrent picketing, as two of the sign industry tri-trade unions, was not for proscribed purposes.¹⁸ Rather, the Respondents contend that the picketing solely was to stop Walter Sign from doing work that came within the Respondents' jurisdictions; to try to prevent work from being taken away from employees represented by the Respondents employed by Montana, and given at lower wage to Walter's employees; and to protest the April 15 discharge of the five Walter Sign employees who had joined the picketing, objectives that have not changed since. The Respondents do not dispute that during the month before the start of the April 15 picketing, from mid-March to mid-April, they simultaneously distributed noncoercive organizational campaign literature at Walter Sign's premises to encourage that Company's employees to become members, that signatures were solicited on authorization cards and that Crowley, in March, unsuccessfully did ask Walter to honor a 6-year-old recognition agreement and to sign a collective-bargaining agreement with his union.

The foregoing confirms Walter's testimony that Respondent IBEW did ask Walter to sign a collective-bargaining agreement with Respondent IBEW. As no representative of Local 137 testified, Walter's assertion that Fotiadis, too, in late March, solicited a contract on behalf of Respondent 137 is uncontradicted, as is Walter's testimony that on May 11, during the picketing, Fotiadis also suggested that Walter sign a contract with Respondent IBEW in order "to solve the problem." However, the Respondents, through Crowley, assert that any recognition purpose was abandoned when, on the morning of April 15 before the start of the picketing, Walter covered his eyes and refused to look at the authorization cards then being offered by Crowley. Since then, absent certification, Respondent IBEW is not prepared to accept any Walter Sign employees as members and is not willing to bargain with that Employer.

Crowley's assertion that he immediately lost interest in acquiring recognition or bargaining from Walter Sign at

the moment that Walter refused to look at the signed cards offered to him, and that the picketing thereafter ensued only for purposes unrelated to recognition or organization, is rebutted by clear evidence that the pickets and the signs already were in place, their use contingent upon whether Crowley's renewed recognition bid on April 15 was successful. His plan to try again for a contract that day had been announced to Grace during the preceding night. When recognition was not forthcoming, the picketing by Respondent IBEW began immediately, joined within a week by Respondent Local 137. This picketing continued without hiatus and without change until service of the temporary restraining order on June 2. After June 2, the picketing continued also without interruption, although without the use of picket signs. It cannot be concluded that the picketing was caused by the asserted discharge of five employees who left work to participate in the strike as the line already was in place before they walked out of the plant.

The Respondents contend, however, that to proscribe all handbilling, an activity which, at the time of the hearing, had ensued since June 3, would serve to infringe on their First Amendment right to publicize their dispute with that Company. In support of this, the Respondents argue that picketing is not the functional equivalent of handbilling, the former alone being subject to regulation as:

Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideals which are being disseminated.¹⁹

However, in *United Mine Workers of America, District 12, and United Mine Workers of America (Truax-Traer Co., et al.)*,²⁰ cited in the Charging Party's brief, the Board in finding that patrolling and carrying picket signs are not requisite components of picketing, noted that:

The purpose of picketing in labor disputes is to convey a message which is usually intended to influence the conduct of certain persons to stay away from work or to boycott a product or business, and is frequently accomplished . . . by posting individuals at the approaches to a place of work.²¹

Here, the persons posted at Walter Sign's premises on and after June 2, when the picket signs were discontinued, not only gave out handbills but continued active interference with deliveries as when the signs had been in use. Walter's undisputed testimony, supported by comprehensive photographic documentation reveals,²² more

¹⁷ *International Brotherhood of Electrical Workers, Local Union No. 211 (Atlantic County Improvement Authority)*, 248 NLRB 168, 172 (1980).

¹⁸ Respondent Local 137 did not call witnesses at the hearing, in effect, deferring to Respondent IBEW in its defense presentation. Noting the Respondents' history of mutual cooperation within their industry, their concurrent organizational activities among complementary, nonconflicting bargaining units of Walter Sign employees, their joint approaches to Walter for recognition, Fotiadis' separate request during the picketing that Walter sign a contract with Respondent IBEW, and their joint picketing, for reasons to be further explicated below, I find that the efforts of the Respondents were coordinated to compel Walter Sign to recognize them, respectively, as representatives of certain of its employees. I also find that the Respondents acted as agents for each other and that each Respondent is equally responsible for the picketing. *Yuba, Sutter & Colusa Counties Building & Construction Trades Council; Carpenters Union Local 1570, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (James N. Wilson)*, 189 NLRB 450, 454-455, fn. 14 (1971); *Construction, Shipyard and General Laborers Local 1207, AFL-CIO; and Building and Construction Trades Council of Tampa, Florida (Alfred S. Austin Construction Company, Inc.)*, 141 NLRB 283, 286 (1963).

¹⁹ Justice Douglas' concurrence in *Bakery & Pastry Drivers & Helper Local 802 of the International Brotherhood of Teamsters, et al. v. Wohl et al.*, 315 U.S. 769, 776 (1942), cited with approval in *Giboney, et al. v. Empire Storage & Ice Co.*, 336 U.S. 490, 501 (1949).

²⁰ 177 NLRB 213 (1969).

²¹ See also *District 30, United Mine Workers of America (Terry Elkhorn Mining Company, Inc.)*, 163 NLRB 562, 569-570 (1967).

²² In reaching the findings herein, care was taken to avoid reliance upon testimony by the General Counsel's principal witness, Walter.

Continued

than 2 weeks after the picket signs were discontinued, it was necessary for Walter Sign employees to unload solvent supplies from the Baron Blakeslee truck across the street from the plant, rather than at the plant's loading dock, and to transport this cargo by forklift to the shop. Accordingly, there was no need for the Respondents to display picket signs or patrol specific areas in order to reaffirm and imbue others with the purpose of the Respondents' presence at Walter Sign's premises.

Respondent IBEW, indicating the 6-year-old recognition agreement from Walter Sign, separately asserts that it would not logically have picketed that Company after April 15 in order to obtain recognition it already had, regardless of whether Crowley was justified in believing that that agreement was legally binding. However, any contention that Crowley had given material weight on April 15 to that venerable document was rebutted by the authorization cards he had caused to be distributed for signature, had personally collected from Grace the night before the picketing,²³ and had offered to Walter on April 15.

The Respondents urge that their picketing was prolonged, in part, to protest an assertion that Walter Sign had engaged in unfair labor practices in terminating the five employees who had left their jobs to join the strike on April 15. However, it is settled that the fact that objectives for picketing beyond recognition and/or organization also exist does not preclude a finding that Section 8(b)(7)(C) of the Act has been violated. As Administrative Law Judge Pannier noted in his Board-approved decision in *Construction and General Laborers, No. 304, AFL-CIO (Paul E. Iacono Structural Engineer, Inc.)*:²⁴

except as that testimony was otherwise corroborated and remained uncontradicted by other witnesses. Walter was an extremely evasive, inconsistent witness, readily impeached. Accordingly, although he repeatedly testified that he did not learn that his Company's long-time business associate, John Montana, had a bargaining relationship with Respondent IBEW until early in May 1981, he later reluctantly conceded that he had had such knowledge since 1975. Although Walter averred in his pretrial affidavit that he had replaced Pericles Gomide, a part-time employee and member of Local 230, Sign Painters, when the picketing began, he admitted at the hearing that he had assigned Gomide to do outside work after April 15 so that that employee would not be faced with crossing the picket line. He also related that since a week before the hearing, Gomide has been a full-time Walter Sign employee who performed work within the plant. Walter testified evasively concerning the impact of the picketing on his Company's operations, and even had found it necessary to change his initial testimony that he had been president of the Company for 8 years, reducing his asserted tenure period by half. Accordingly, Walter appeared to be less than reliable, and the accounts by Crowley of their March 31 and April 15 meetings are credited, except as the March meeting relates to Fotiadis.

²³ The Board has found recognition/organizational objectives where, as here, the Respondent Union's agents have urged employees to join the Union and to get others to do the same in the time before the picketing began. *Minneapolis Building and Construction Trades Council, AFL-CIO, Local No. 34, Sheet Metal Workers International Association, AFL-CIO (Krasen Plumbing and Heating, Inc.)*, 229 NLRB 98, 103 (1977). The Respondents' assertion that the picketing had not been for recognition/organizational purposes also is countered by the collective testimony of Grace and Martin that they had joined the strike to be represented by Respondent IBEW in order to gain more money and better benefits. Respondent IBEW's argument at the hearing that these individuals, who had risked their jobs to join its picket line, were not picketing with the same objectives as itself is unconvincing.

²⁴ 245 NLRB 346, 350-351 (1979). Also see *United Food and Commercial Workers International Union, Local No. 576, AFL-CIO (Earl J. Engle,*

So long as recognition is at least an object of the picketing, the requirement of Section 8(b)(7) that there be an object of recognition or bargaining is satisfied. See *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 229, AFL-CIO (Jensen Meat Company, Inc.)*, 237 NLRB 650, 652 (1978).

* * * * *

... the fact that an employer may commit unfair labor practices does not eliminate the need for a petition to be filed whenever recognition picketing is conducted. "It seems fair to say that Congress was unwilling to write an exemption into Section 8(b)(7)(C) dispensing with the necessity for filing a representation petition whenever employer unfair labor practices were alleged." *International Hod Carriers' Building and Common Laborers' Union of America, Local 840, AFL-CIO (Charles A. Blinne, d/b/a C. A. Blinne Construction Company)*, 135 NLRB 1153, 1164-65 (1962). Consequently, whether or not Iacono violated the Act in its hiring practices ... would not serve as a defense to Respondent's picketing.

... failure to file a petition is excused only "where a union strikes and pickets against an employer's unlawful refusal to recognize it and meritorious 8(a)(5) charges have been filed." *Arthur F. Derse, Sr., President, and Wilder Mfg. Co., Inc.*, 185 NLRB 175, 177 (1970).²⁵

As found above, the picketing herein by Respondent IBEW began on April 15 and the picketing by Respondent 137 commenced within a week after that. Petitions for representations for representation elections among employees of Walter Sign thereafter were filed on May 22 and June 1 by Respondent IBEW and Respondent 137, respectively.

From the entire record, I find that objects of the picketing by the Respondents were to force or require Walter Sign to recognize or bargain with them as bargaining representatives of that Company's employees, and to force or require that Company's employees to accept and select them as bargaining representatives. As neither Respondent was certified as the representative of such employees, and as both had engaged in such picketing for more than 30 days without filing petitions for certification, it is concluded that the Respondents violated Section 8(b)(7)(C) of the Act.

Attorney, on behalf of R & F Grocers, Inc., 252 NLRB 1110, 1113-14 (1980).

²⁵ No finding is made as to whether the five employees who joined the picketing on April 15 actually were terminated or if so, whether such discharges were unlawful as it is clear from the above that, in the circumstances of this case, their unlawful terminations, even if found, would not constitute a defense to the 8(b)(7)(C) picketing allegation. Barring that, the question of unlawful discharge is outside the scope of this proceeding.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of the Respondents set forth in section III, above, occurring in connection with the operation of Walter Sign set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Walter Sign Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondents both are labor organizations within the meaning of Section 2(5) of the Act.

3. By picketing, or causing to be picketed, Walter Sign with objects of forcing or requiring that Employer to recognize and bargain with them as collective-bargaining representatives of its employees, and forcing or requiring those employees to accept and select the Respondents as their collective-bargaining representatives in separate respective units, without their being certified as the collective-bargaining representatives of such employees and without petitions under Section 9(c) of the Act being timely filed, the Respondents, respectively, engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have engaged in unfair labor practices in violation of the Act, I shall recommend that they be required to cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.²⁶

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²⁷

The Respondents, Local 137, Sheet Metal Workers International Association, AFL-CIO, and Local 3, International Brotherhood of Electrical Workers, AFL-CIO, their officers, agents, and representatives, shall:

1. Cease and desist from picketing, or causing to be picketed, Walter Sign Corporation at its plant, or at any

²⁶ As it has been found that even after ceasing to use picket signs following service of the temporary restraining order, the Respondents' continued presence at Walter Sign's premises was asserted not only by the distribution of literature, but also by interference with deliveries made there, it is intended that restraints on unlawful picketing provided in the recommended Order, *infra*, also pertain to this tandem conduct.

²⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

jobsite, where an object thereof is forcing or requiring said Employer to recognize or bargain with them as representatives of its employees, or to force or require employees of Walter Sign Corporation to accept or select the Respondents as their collective-bargaining representatives, in circumstances violative of Section 8(b)(7)(C) of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act:

(a) Post at their respective business offices and meeting halls copies of the attached notice marked "Appendix."²⁸ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by an official representative of each Respondent, shall be posted by said Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondents have been taken to comply therewith.

²⁸ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT, under conditions prohibited by Section 8(b)(7)(C) of the Act, picket or cause to be picketed, Walter Sign Corporation, where objects thereof are to force or require that Employer to recognize or bargain with us as representatives of its employees, or to force or require Walter Sign employees to accept or select us as their collective-bargaining representatives.

LOCAL 3, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

LOCAL 137, SHEET METAL WORKERS IN-
TERNATIONAL ASSOCIATION, AFL-CIO